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SUBJECT: A WAY FORWARD FOR MUTUAL LEGAL ASSISTANCE AND
ASSET RECOVERY IN BANGLADESH

Classified By: AMBASSADOR JAMES F. MORIARTY, REASONS 1.4(B) AND (D)

Summary

¶1. (C) GOB's Law Minister Shafique Ahmed recently promised the government's full support for the development of a mutual legal assistance (MLA) program for Bangladesh, including the establishment of a Central Authority for MLA in the Office of the Attorney General (OAG). The Law Minister also agreed to provide full cooperation in pending anti-corruption asset recovery cases.

Background to April 27 Gathering

¶2. (C) A Mission priority and focus has been working with the GOB to address Bangladesh's lack of capacity for MLA, including obtaining foreign evidence for use at domestic criminal trials, executing foreign requests for evidence located in Bangladesh, and seizing and confiscating stolen assets located abroad. During 2008, under the Caretaker Government and with assistance from the Resident Legal Advisor (RLA) office, Bangladesh submitted its first MLA request related to anti-corruption efforts and also provided evidence to the U.S. government in response to an MLA request. This cooperation led to a January 2009 U.S. forfeiture action against money located in Singapore that is tied to alleged bribes paid to Arafat "Koko" Rahman, the son of the former prime minister of Bangladesh. RLA also provided equipment to support Bangladesh's MLA efforts, including two computers with appropriate software and a dedicated internet line, furniture and a safe, all located in the OAG.

Initial Disinterest from New Government

¶3. (C) Interest in MLA, anti-corruption and asset recovery efforts appeared to wane immediately after the new government assumed power in January 2009. Although the government had campaigned on continuing anti-corruption efforts, the Bangladesh Rifles (BDR) mutiny in late February 2009 and the renewed interest in reviving prosecutions for war crimes committed during the 1971 Liberation War distracted the government from these efforts. Pending MLA requests from the US and other countries related to these efforts remained with the OAG, unexecuted. At the same time, the new GOB has clearly been focused on exonerating senior Awami League politicians (including the Prime Minister) who were charged with corruption during the Caretaker Government's regime

from January 2007 to December 2008.

14. (C) Confusion also persisted about which Bangladeshi agency would coordinate MLA requests. To date, Bangladesh has had at least two Central Authorities for MLA, including the Ministry of Home Affairs under the 1988 Vienna Convention (Drug Trafficking) and the OAG under the UN Convention against Corruption (UNCAC). Despite this latter designation (in 2008), representatives of the Anti-Corruption Commission (ACC) continued to argue into 2009 that the ACC should be designated as the Central Authority under UNCAC. (Note: Multilateral conventions that include MLA provisions typically require signatory countries to establish a Central Authority to coordinate MLA requests. Most countries create a single Central Authority to coordinate all MLA matters. This avoids a fragmentation of effort and inconsistency of approach which occurs when different Central Authorities are designated under different treaties for different groups of offenses. End note.)

Engaging on MLA and Asset Recovery

15. (C) Soon after the new government assumed power, the Embassy began taking steps to renew interest in the MLA and asset recovery efforts. In March, a DOJ/OPDAT Intermittent Legal Advisor (ILA) joined the RLA office to provide advice and technical assistance to the GOB on MLA and on asset recovery. The RLA office also met with several GOB ministers to advocate the continuation and consolidation of the MLA and asset recovery efforts, including establishing a single Bangladeshi Central Authority for these matters.

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Law Minister Decides to Push the Issue

16. (C) During one of these discussions, Law Minister Shafique Ahmed agreed to co-sponsor a meeting of high-level GOB ministers and other stakeholders concerning MLA and asset recovery efforts. The purpose of the meeting was to explain the importance of MLA and a single Central Authority, to reinvigorate asset recovery efforts, and to come to an agreement on a way forward on these efforts.

17. (C) On April 26, the RLA office, accompanied by Linda Samuel, Deputy Chief of the DOJ/Asset Forfeiture and Money Laundering Section, met separately with the Law Minister and the Attorney General. The Law Minister, who had previously argued that the Central Authority should be placed in the Law Ministry (which has authority over the OAG), sought DOJ's opinion about where the Central Authority should be placed. The RLA office recommended that the Central Authority be located in the OAG, primarily because OAG lawyers, unlike lawyers in the Law Ministry, had the necessary background and courtroom experience to ensure adequate legal review of MLA requests and to obtain the necessary orders and warrants from court to execute foreign MLA requests.

18. (C) The Director General (DG) of the Directorate General of Forces Intelligence (DGFI) also requested a meeting with the RLA office and Ms. Samuel. The DG indicated that he had met with the Prime Minister that day, and he conveyed the Prime Minister's full support for the MLA and asset recovery program. (Note: the DG was previously the head of the National Coordinating Committee and played a significant role in the anti-corruption investigations and prosecutions under the Caretaker Government. End note.)

The April 27 Gathering

¶9. (C) On April 27, the Law Minister convened the meeting, which the RLA moderated. Attendees included the Ambassador; Finance Minister Abul Maal A. Muhith; the Security Advisor to the Prime Minister, Maj Gen (Rtd) Tarik Ahmed Siddique; Home Affairs Minister Shahara Khatun, accompanied by her State Minister Tanjim Ahmad Sohel Taj; Attorney General Mahbubey Alam; Anisul Huq, Senior Prosecutor from the ACC; Barrister Sheikh Fazle Noor Taposh, Member of Parliament; and other senior officials from these and other agencies.

¶10. (C) The first presentation to the ministers outlined the importance of MLA and that Bangladesh meet its treaty obligations, the establishment of a sole Central Authority, and the highlights of a proposed MLA Act for Bangladesh, a copy of which the RLA office already had submitted to the Law Ministry. Next, Linda Samuel discussed asset recovery. She first reviewed the pending U.S. forfeiture action against Koko Rahman, and then explained how the United States could assist with asset recovery in anti-corruption cases, provided that the GOB had the political will and an organizational and statutory framework and allocated the human and financial resources in support of this framework. She concluded by stating that the US was willing to help recover illicitly obtained assets, but without cooperation and action by the GOB, there would be no asset recovery.

The Way Forward

¶11. (C) The Law Minister's comments focused on the way forward, noting that the Central Authority would be in the OAG. He also recommended that the GOB follow the Way Forward document, a brief and informal paper prepared and distributed by the RLA office to the attendees. This document laid out suggested steps, including (1) setting up a single Central Authority with appropriate staff and resources, (2) enacting appropriate legislation in support of the Central Authority, (3) establishing effective coordination between GOB agencies for the prompt execution of foreign MLA requests, (4) re-designating the appropriate multilateral and bilateral treaties with the newly designated Central Authority, and (5) training investigators and prosecutors on how to prepare and/or execute MLA requests, including asset recovery requests.

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¶12. (C) The Finance Minister reiterated the government's support for a single Central Authority and the coordination of MLA and asset recovery efforts. He urged training on these issues for prosecutors, investigators and others. The Law Minister then concluded the meeting by stating that the GOB would extend all cooperation to the U.S. in these matters. He added that cooperating in MLA and asset recovery would "strengthen the roots of democracy" in Bangladesh.

¶13. (C) On the margins of the event, the Law Minister confided to us that during the Cabinet meeting earlier that day, the Prime Minister had asked her ministers to fully support the MLA and asset recovery programs. The Law Minister pledged his government's full cooperation. Separately, the State Minister for Home Affairs expressed his support for the MLA program, arguing that a Central Authority was a good model for coordinating counter-terrorism and security matters. He also expressed concern about possible resistance to developing a "system" for the execution of MLA requests; he said that Bangladeshis do not have "systems," preferring to handle matters informally.

COMMENT: CAUTIOUSLY OPTIMISTIC

¶14. (C) We are pleased by the renewed commitment of the GOB on MLA and asset recovery efforts. The Embassy's efforts to

meet with the Ministers and stress to them the importance of these efforts clearly worked, reaching the attention and gaining the support of the Prime Minister. The proof, however, will be in the months ahead. Signs of progress should include: (1) the prompt execution of pending foreign, including U.S., MLA requests; (2) the allocation of personnel and financial resources to the OAG as the Central Authority; (3) the enactment of a new law on MLA (including a provision ensuring the confidentiality of MLA requests) and asset recovery and, as necessary, amended rules of evidence and criminal procedure to support MLA; (4) the establishment of effective coordination between the Central Authority and competent domestic authorities for the execution of foreign MLA requests; and (5) adequate training of Bangladeshi prosecutors and investigators on MLA and asset recovery. We also will need to remain vigilant regarding attempts by the GOB to use MLA for partisan purposes. The true test of the GOB,s commitment will come if/when it is confronted by a corruption case involving a member of the ruling party.

MORIARTY